

December 23, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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Seattle, Washington 98104
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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources & Parks, Water and Land Resources Division, File No.
E05CT004
Proposed Ordinance No. **2005-0436**

Open Space Taxation (Public Benefit Rating System)
Application of
VIRGINIA MAREL
P.O. Box 1232
Issaquah, Washington 98027

Location of Property: 16912 – 254th Avenue Southeast
Issaquah, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 9.18 acres for 20% of market value
Department's Final:	Approve 9.18 acres for 20% of market value
Examiner:	Approve 9.18 acres for 20% of market value

PRELIMINARY REPORT:

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E05CT004 was received by the Examiner on November 22, 2005.

PUBLIC HEARING:

After reviewing the Department of Natural Resources & Parks, Water and Land Resources Division, report and examining available information on file with the application, the Examiner conducted a public hearing on the subject as follows:

The hearing on item no. E05CT004 was opened by the Examiner at 1:35 p.m., December 8, 2005, in the Hearing Examiner's Conference Room, 400 Yesler Way, Room 404, Seattle, Washington, and closed at 1:47 p.m.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owners:	Virginia and William (deceased) Marel PO Box 1232 Issaquah, WA 98027	
Property location:	16912 - 254th Avenue SE Issaquah, WA 98027	
PBRs categories requested:	Open space resources Farm and agricultural conservation land Forest stewardship land Significant aquatic ecosystem Significant wildlife or salmonid habitat Special animal site Surface water quality buffer Bonus categories Resource restoration Additional surface water quality buffer Seasonally limited public access	
Categories recommended:	Open space resources Aquifer protection area Farm and agricultural conservation land Forest stewardship land Shoreline: conservancy environment Significant wildlife or salmonid habitat Special animal site Surface water quality buffer	
Zoning:	RA-5	
Parcel nos.	2262306-9095	262306-9096
Total acreage:	5.07	4.48
Requested for PBRs:	4.76	4.48
Recommended PBRs:	4.70	4.48

COMMENT: The property is 9.55 acres in size. The total area requested is 9.24 acres. The total area recommended is 9.18 acres.

STR: SE 26-23-06

2. Except as modified herein, the facts set forth in the King County Department of Natural Resources & Parks, Water and Land Resources Division, Preliminary Report for the December 8, 2005, public hearing are found to be correct and are incorporated herein by this reference. Copies of the department report will be provided with the copies of this report submitted to the King County Council. The following corrections are made as recommended in staff testimony:
 - A. Page 1, General Information, section 5, should read, "...The total area requested is 9.24 acres. The total area recommended is 9.18 acres...", rather than 9.25 and 9.19 respectively.
 - B. The deadline for submission of written support for the Seasonally Limited Public Access category should read May 1, 2006, rather than May 1, 2005.
 - C. The Comment section on page 6 should be corrected to read, "*If credit is awarded for this category, the point total will increase to 36, which results in a 90% reduction in value for the portion enrolled in PBRs."
3. Timely application was made to King County for current use valuation of the subject property to begin in 2007. Notice of the application was given as required by law.
4. The property contains priority open space resources and subject to contingencies is eligible for a total award of 33 points under the King County Public Benefit Rating System. The resulting current use value would therefore be 20% of market value for 9.18 acres of the property.
5. Credit for the Farm and Agricultural Conservation Land and Forest Stewardship Land categories is contingent upon implementation of the Applicant's respective Farm Management and Forest Stewardship Land Plans for the property. Failure to implement either one of the Plans will result in disqualification for the respective category, resulting in a reduction of 5 award points with no change to the enrolled properties current use valuation. Failure to implement both plans will result in disqualification for both categories, resulting in a reduction of 10 awards points with no change to the enrolled property's current use valuation.
6. Credit may be awarded administratively for the Seasonally Limited Public Access category if adequate documentation supporting access is provided by May 1, 2006. Award of points for this category would result in an additional 3 points and subject to the above contingency noted in Finding no. 5 would result in a current use valuation for the enrolled property of 10% of market value.
7. A neighbor, John Reid, expressed concern during the hearing about increased use of the jointly owned private road providing access to the subject property and Mr. Reid's property. Mr. Reid testified that the road is in poor condition and if public access is increased as may be facilitated or encouraged by the requested Seasonally Limited Public Access award, its condition would likely deteriorate further with the additional use. Department staff stated that the Department would not be encouraging public use under the program. Regardless, there are no relevant decision criteria or other authorities under the code for the Examiner to address this issue in deciding the application. As briefly discussed in the hearing, Mr. Reid may wish to research the

status of the joint private road as to the allowance of public and/or additional traffic, discuss his concerns with Ms. Marel, and/or seek other avenues of addressing his concerns.

CONCLUSION:

1. Approval of current use valuation of 20% of market value for 9.18 acres of the property, pursuant to the Public Benefit Rating System adopted by King County Ordinance No. 10511, as amended, would be consistent with the purposes and intent of King County to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.

RECOMMENDATION:

APPROVE current use valuation of 20% of market value for 9.18 acres of the subject property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the December 8, 2005, public hearing, and the following additional conditions of approval:

- A. Credit for the Farm and Agricultural Conservation Land and Forest Stewardship Land categories is contingent up implementation of the Applicant's respective Farm Management and Forest Stewardship Plans for the subject property as indicated in Finding no. 5 above. Failure to qualify for either or both of these categories will result in adjustments to the total award points as noted in the Finding.
- B. Credit may be awarded administratively for the Seasonally Limited Public Access category as indicated in Finding no. 6 above. Total award points and current use valuation of the enrolled property shall be adjusted accordingly.

Current use valuation shall be subject to all terms and conditions of RCW Chapter 84.34 and KCC Chapter 20.36, as may be amended from time to time, and all regulations and rules duly adopted to implement state law and county ordinances pertaining to current use valuation.

RECOMMENDED this 23rd day of December, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 23rd day of December, 2005, to the following parties and interested persons:

Virginia Marel
P.O. Box 1232
Issaquah, WA 98027

Susan Monroe, Department of Assessments
Ted Sullivan, Dept. of Natural Resources & Parks
Charlie Sundberg, Office of Cultural Resources

John Reid
16711 - 254th Ave.
Issaquah, WA 98027

Marilyn Cope, KCC – Committee Staff
Bill Bernstein, Dept. of Natural Resources & Parks
Sally King, Dept. of Natural Resources & Parks

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) **on or before January 6, 2006**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before January 13, 2006**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council is final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE DECEMBER 8, 2005 PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E05CT004:

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Ted Sullivan representing the Department, and John Reid. No others participated in this hearing.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 *Not Submitted*
- Exhibit No. 2 *Not Submitted*
- Exhibit No. 3 *Not Submitted*
- Exhibit No. 4 PBRs Staff Report
- Exhibit No. 5 Affidavit of Publication
- Exhibit No. 6 Notice of hearing from the Hearing Examiner's Office
- Exhibit No. 7 Notice of hearing from the PBRs program

- Exhibit No. 8 Legal notice and introductory ordinance to County Council
- Exhibit No. 9 Application signed/notarized
- Exhibit No. 10 Letter to Applicant re: received application and approval schedule
- Exhibit No. 11 Assessor's map
- Exhibit No. 12 King County Assessor's database printout
- Exhibit No. 13 Arcview/orthophoto map
- Exhibit No. 14 Forest Stewardship Plan
- Exhibit No. 15 Legal description of area to be enrolled
- Exhibit No. 16 Copy of letter sent to neighbors re: notification of PBRS application
- Exhibit No. 17 Farm Management Plan

PTD:ms
E05CT004 RPT

Attachment

This document is provided for information only. DO NOT complete and return. A completed copy will be furnished to the Applicant(s) by the Office of the Hearing Examiner after an application has been approved by the Metropolitan King County Council.

OPEN SPACE TAXATION AGREEMENT

Chapter 84.34 RCW

(To be used for "Open Space", "Timber Land" Classification or "Reclassification" Only)

Property Owner: **XXX**
Property Address: **XXXX**
Granting Authority: **King County, Washington**
Legal Description

Assessor's Property Tax Parcel or Account Number: **XXX**
Department of Natural Resources & Parks File Number: **E0XXX**
This agreement is between **XXX** hereinafter called the "Owner", and
King County, Washington hereinafter called the "Granting Authority".

Whereas the owner of the above described real property having made application for classification of that property under the provisions of Chapter 84.34 RCW. And whereas, both the owner and granting authority agree to limit the use of said property, recognizing that such land has substantial public value as open space and that the preservation of such land constitutes an important physical, social, esthetic, and economic asset to the public, and both parties agree that the classification of the property during the life of this agreement shall be for:

Open Space Land

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein, do agree as follows:

1. During the term of this agreement, the land shall be used only in accordance with the preservation of its classified use.
2. No structures shall be erected upon such land except those directly related to, and compatible with, the classified use of the land.
3. This agreement shall be effective commencing on the date the legislative body receives the signed agreement from the property owner and shall remain in effect until the property is withdrawn or removed from classification.
4. This agreement shall apply to the parcels of land described herein and shall be binding upon the heirs, successors and assignees of the parties hereto.
5. The landowner may withdraw from this agreement if, after a period of eight years, he or she files a request to **withdraw** classification with the assessor. Two years from the date of that request the assessor shall withdraw classification from the land, and the applicable taxes and interest shall be imposed as provided in RCW 84.34.070 and 84.34.108.
6. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), or (9), shall be considered a **breach** of this agreement, and shall be subject to removal of classification and liable for applicable taxes, penalties, and interest as provided in RCW 84.34.080 and RCW 84.34.108.
7. A **breach** of agreement shall not have occurred and the additional tax shall not be imposed if removal of classification resulted solely from:
 - a) Transfer to a governmental entity in exchange for other land located within the State of Washington.
 - b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power in anticipation of the exercise of such power and having manifested its intent in writing or by other official action.
 - c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the land owner changing the use of such property.
 - d) Official action by an agency of the State of Washington or by the county or city where the land is located disallowing the present use of such land.
 - e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020.
 - f) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (see RCW 84.34.108(6)(f)).

- g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e).
 - h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.
 - i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
 - j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.
 - k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as forest land under chapter 84.33 RCW, or under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.
8. The county assessor may require an owner to submit data relevant to continuing the eligibility of any parcel of land described in this agreement.
 9. The owner may apply for reclassification as provided in Chapter 84.34 RCW.

This agreement shall be subject to the following conditions:

See attached Hearing Examiner Report and Recommendation

It is declared that this agreement specifies the classification and conditions as provided for in Chapter 84.34 RCW and the conditions imposed by this Granting Authority. This agreement to tax according to the use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Granting Authority:

Dated _____

_____ King County, Washington

Larry Phillips
Chair of Council

As owner(s) of the herein-described land I/we indicated by my/our signature(s) that I am/we are aware of the potential tax liability and hereby accept the classification and conditions of this agreement (must be signed by all owners).

Print Name

Signature

Date signed agreement received by Legislative Authority _____

For tax assistance, visit <http://dor.wa.gov> or call 1-800-647-7706. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.
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